



Rep. Sara Feigenholtz

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1 AMENDMENT TO HOUSE BILL 5925

2 AMENDMENT NO. _____. Amend House Bill 5925 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Clinical Laboratory and Blood Bank
5 Act is amended by adding Sections 2-134, 2-135, 2-136, and
6 2-137 and by changing Section 7-102 as follows:

7 (210 ILCS 25/2-134 new)

8 Sec. 2-134. Health care operations. "Health care
9 operations" has the meaning ascribed to it under HIPAA, as
10 specified in 45 CFR 164.501.

11 (210 ILCS 25/2-135 new)

12 Sec. 2-135. HIPAA. "HIPAA" means the Health Insurance
13 Portability and Accountability Act of 1996, Public Law 104-191,
14 as amended by the Health Information and Technology for
15 Economic and Clinical Health Act of 2009, Public Law 111-05,

1 and any subsequent amendments thereto and any regulations
2 promulgated thereunder.

3 (210 ILCS 25/2-136 new)

4 Sec. 2-136. Payment. "Payment" has the meaning ascribed to
5 it under HIPAA, as specified in 45 CFR 164.501.

6 (210 ILCS 25/2-137 new)

7 Sec. 2-137. Treatment. "Treatment" has the meaning
8 ascribed to it under HIPAA, as specified in 45 CFR 164.501.

9 (210 ILCS 25/7-102) (from Ch. 111 1/2, par. 627-102)

10 Sec. 7-102. Reports of test results.

11 (a) Clinical laboratory test results may be reported or
12 transmitted to:

13 (1) the licensed physician or other authorized person
14 who requested the test, their designee, or both;

15 (2) any health care provider who is providing treatment
16 to the patient;

17 (3) an electronic health information exchange for the
18 purposes of transmitting, using, or disclosing clinical
19 laboratory test results in any manner required or permitted
20 by HIPAA. ~~The result of a test shall be reported directly~~
21 ~~to the licensed physician or other authorized person who~~
22 ~~requested it.~~

23 (b) No interpretation, diagnosis, or prognosis or

1 suggested treatment shall appear on the laboratory report form,
2 except that a report made by a physician licensed to practice
3 medicine in Illinois, a dentist licensed in Illinois, or an
4 optometrist licensed in Illinois may include such information.

5 (c) Nothing in this Act prohibits the sharing of
6 information as authorized in Section 2.1 of the Department of
7 Public Health Act.

8 (Source: P.A. 98-185, eff. 1-1-14.)

9 Section 10. The AIDS Confidentiality Act is amended by
10 changing Sections 2, 3, 9, 10, and 16 and by adding Sections
11 9.1, 9.2, 9.3, 9.4, 9.4a, 9.6, 9.7, 9.8, 9.9, and 9.10 as
12 follows:

13 (410 ILCS 305/2) (from Ch. 111 1/2, par. 7302)

14 Sec. 2. The General Assembly finds that:

15 (1) The use of tests designed to reveal a condition
16 indicative of Human Immunodeficiency Virus (HIV) infection can
17 be a valuable tool in protecting the public health.

18 (2) Despite existing laws, regulations and professional
19 standards which require or promote the informed, voluntary and
20 confidential use of tests designed to reveal HIV infection,
21 many members of the public are deterred from seeking such
22 testing because they misunderstand the nature of the test or
23 fear that test results or other health information that reveals
24 their HIV status will be disclosed without their consent.

1 (3) The public health will be served by facilitating
2 informed, voluntary and confidential use of tests designed to
3 reveal HIV infection and appropriately protecting the health
4 information privacy of patients who are HIV-positive.

5 (4) The public health will also be served by expanding the
6 availability of informed, voluntary, and confidential HIV
7 testing and treatment and making HIV testing a routine part of
8 general medical care, as recommended by the United States
9 Centers for Disease Control and Prevention.

10 (5) The use of electronic health record systems and the
11 exchange of electronic patient records, both paper and
12 electronic, through secure means, including through secure
13 health information exchanges, should be encouraged to improve
14 patient health care and care coordination, facilitate public
15 health reporting, and control health care costs, among other
16 purposes.

17 (6) Limiting the use or disclosure of, and requests for,
18 protected health information to the minimum necessary to
19 accomplish an intended purpose, when being transmitted by or on
20 behalf of a covered entity under HIPAA, is a key component of
21 health information privacy. The disclosure of HIV-related
22 information, when allowed by this Act, shall be performed in
23 accordance with the minimum necessary standard when required
24 under HIPAA.

25 (Source: P.A. 95-7, eff. 6-1-08.)

1 (410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

2 Sec. 3. When used in this Act:

3 (a) "AIDS" means acquired immunodeficiency syndrome.

4 (b) "Authority" means the Illinois Health Information
5 Exchange Authority established pursuant to the Illinois Health
6 Information Exchange and Technology Act.

7 (c) "Business associate" has the meaning ascribed to it
8 under HIPAA, as specified in 45 CFR 160.103.

9 (d) "Covered entity" has the meaning ascribed to it under
10 HIPAA, as specified in 45 CFR 160.103.

11 (e) "De-identified information" means health information
12 that is not individually identifiable as described under HIPAA,
13 as specified in 45 CFR 164.514(b).

14 (f) ~~(a)~~ "Department" means the Illinois Department of
15 Public Health or its designated agents.

16 (g) "Disclosure" has the meaning ascribed to it under
17 HIPAA, as specified in 45 CFR 160.103.

18 (h) "Health care operations" has the meaning ascribed to it
19 under HIPAA, as specified in 45 CFR 164.501.

20 (i) "Health care professional" means (i) a licensed
21 physician, (ii) a physician assistant to whom the physician
22 assistant's supervising physician has delegated the provision
23 of AIDS and HIV-related health services, (iii) an advanced
24 practice registered nurse who has a written collaborative
25 agreement with a collaborating physician which authorizes the
26 provision of AIDS and HIV-related health services, (iv) a

1 licensed dentist, (v) a licensed podiatric physician, or (vi)
2 an individual certified to provide HIV testing and counseling
3 by a state or local public health department.

4 (j) "Health care provider" has the meaning ascribed to it
5 under HIPAA, as specified in 45 CFR 160.103.

6 ~~(b) "AIDS" means acquired immunodeficiency syndrome.~~

7 ~~(c) "HIV" means the Human Immunodeficiency Virus or any~~
8 ~~other identified causative agent of AIDS.~~

9 ~~(d) "Informed consent" means a written or verbal agreement~~
10 ~~by the subject of a test or the subject's legally authorized~~
11 ~~representative without undue inducement or any element of~~
12 ~~force, fraud, deceit, duress or other form of constraint or~~
13 ~~coercion, which entails at least the following pre-test~~
14 ~~information:~~

15 ~~(1) a fair explanation of the test, including its~~
16 ~~purpose, potential uses, limitations and the meaning of its~~
17 ~~results; and~~

18 ~~(2) a fair explanation of the procedures to be~~
19 ~~followed, including the voluntary nature of the test, the~~
20 ~~right to withdraw consent to the testing process at any~~
21 ~~time, the right to anonymity to the extent provided by law~~
22 ~~with respect to participation in the test and disclosure of~~
23 ~~test results, and the right to confidential treatment of~~
24 ~~information identifying the subject of the test and the~~
25 ~~results of the test, to the extent provided by law.~~

26 ~~Pre test information may be provided in writing, verbally,~~

1 ~~or by video, electronic, or other means. The subject must be~~
2 ~~offered an opportunity to ask questions about the HIV test and~~
3 ~~decline testing. Nothing in this Act shall prohibit a health~~
4 ~~care provider from combining a form used to obtain informed~~
5 ~~consent for HIV testing with forms used to obtain written~~
6 ~~consent for general medical care or any other medical test or~~
7 ~~procedure provided that the forms make it clear that the~~
8 ~~subject may consent to general medical care, tests, or medical~~
9 ~~procedures without being required to consent to HIV testing and~~
10 ~~clearly explain how the subject may opt out of HIV testing.~~

11 (k) ~~(e)~~ "Health facility" means a hospital, nursing home,
12 blood bank, blood center, sperm bank, or other health care
13 institution, including any "health facility" as that term is
14 defined in the Illinois Finance Authority Act.

15 (l) "Health information exchange" or "HIE" means a health
16 information exchange or health information organization that
17 oversees and governs the electronic exchange of health
18 information that (i) is established pursuant to the Illinois
19 Health Information Exchange and Technology Act, or any
20 subsequent amendments thereto, and any administrative rules
21 adopted thereunder; (ii) has established a data sharing
22 arrangement with the Authority; or (iii) as of August 16, 2013,
23 was designated by the Authority Board as a member of, or was
24 represented on, the Authority Board's Regional Health
25 Information Exchange Workgroup. In certain circumstances, in
26 accordance with HIPAA, an HIE will be a business associate.

1 (m) "Health oversight agency" has the meaning ascribed to
2 it under HIPAA, as specified in 45 CFR 164.501.

3 (n) "HIPAA" means the Health Insurance Portability and
4 Accountability Act of 1996, Public Law 104-191, as amended by
5 the Health Information Technology for Economic and Clinical
6 Health Act of 2009, Public Law 111-05, and any subsequent
7 amendments thereto and any regulations promulgated thereunder.

8 (o) "HIV" means the human immunodeficiency virus.

9 (p) "HIV-related information" means the identity of a
10 person upon whom an HIV test is performed, the results of an
11 HIV test, as well as diagnosis, treatment, and prescription
12 information that reveals a patient is HIV-positive, including
13 such information contained in a limited data set. "HIV-related
14 information" does not include information that has been
15 de-identified in accordance with HIPAA.

16 (q) "Informed consent" means a written or verbal agreement
17 by the subject of a test or the subject's legally authorized
18 representative without undue inducement or any element of
19 force, fraud, deceit, duress, or other form of constraint or
20 coercion, which entails at least the following pre-test
21 information:

22 (1) a fair explanation of the test, including its
23 purpose, potential uses, limitations, and the meaning of
24 its results;

25 (2) a fair explanation of the procedures to be
26 followed, including the voluntary nature of the test, the

1 right to withdraw consent to the testing process at any
2 time, the right to anonymity to the extent provided by law
3 with respect to participation in the test and disclosure of
4 test results, and the right to confidential treatment of
5 information identifying the subject of the test and the
6 results of the test, to the extent provided by law; and

7 (3) where the entity providing the test is a
8 participant in an HIE, a fair explanation that the results
9 of the patient's HIV test will be accessible through an HIE
10 and meaningful disclosure of the patient's opt-out right
11 under Section 9.6 of this Act.

12 Pre-test information may be provided in writing, verbally,
13 or by video, electronic, or other means. The subject must be
14 offered an opportunity to ask questions about the HIV test and
15 decline testing. Nothing in this Act shall prohibit a health
16 care provider from combining a form used to obtain informed
17 consent for HIV testing with forms used to obtain written
18 consent for general medical care or any other medical test or
19 procedure provided that the forms make it clear that the
20 subject may consent to general medical care, tests, or medical
21 procedures without being required to consent to HIV testing and
22 clearly explain how the subject may opt out of HIV testing.

23 (r) "Limited data set" has the meaning ascribed to it under
24 HIPAA, as described in 45 CFR 164.512(e) (2).

25 (s) "Minimum necessary" means the HIPAA standard for using,
26 disclosing, and requesting protected health information found

1 in 45 CFR 154.502(b) and 164.514(d).

2 (t) "Organized health care arrangement" has the meaning
3 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

4 (u) "Patient safety activities" has the meaning ascribed to
5 it under 42 CFR 3.20.

6 (v) "Payment" has the meaning ascribed to it under HIPAA,
7 as specified in 45 CFR 164.501.

8 (w) "Person" includes any natural person, partnership,
9 association, joint venture, trust, governmental entity, public
10 or private corporation, health facility, or other legal entity.

11 (x) "Protected health information" has the meaning
12 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

13 (y) "Research" has the meaning ascribed to it under HIPAA,
14 as specified in 45 CFR 164.501.

15 (z) "State agency" means an instrumentality of the State of
16 Illinois and any instrumentality of another state that,
17 pursuant to applicable law or a written undertaking with an
18 instrumentality of the State of Illinois, is bound to protect
19 the privacy of HIV-related information of Illinois persons.

20 ~~(f) "Health care provider" means any health care~~
21 ~~professional, nurse, paramedic, psychologist or other person~~
22 ~~providing medical, nursing, psychological, or other health~~
23 ~~care services of any kind.~~

24 ~~(f-5) "Health care professional" means (i) a licensed~~
25 ~~physician, (ii) a physician assistant to whom the physician~~
26 ~~assistant's supervising physician has delegated the provision~~

1 ~~of AIDS and HIV-related health services, (iii) an advanced~~
2 ~~practice registered nurse who has a written collaborative~~
3 ~~agreement with a collaborating physician which authorizes the~~
4 ~~provision of AIDS and HIV-related health services, (iv) a~~
5 ~~licensed dentist, (v) a licensed podiatric physician, or (vi)~~
6 ~~an individual certified to provide HIV testing and counseling~~
7 ~~by a state or local public health department.~~

8 (aa) ~~(g)~~ "Test" or "HIV test" means a test to determine the
9 presence of the antibody or antigen to HIV, or of HIV
10 infection.

11 (bb) "Treatment" has the meaning ascribed to it under
12 HIPAA, as specified in 45 CFR 164.501.

13 (cc) "Use" has the meaning ascribed to it under HIPAA, as
14 specified in 45 CFR 160.103, where context dictates.

15 ~~(h) "Person" includes any natural person, partnership,~~
16 ~~association, joint venture, trust, governmental entity, public~~
17 ~~or private corporation, health facility or other legal entity.~~

18 (Source: P.A. 98-214, eff. 8-9-13.)

19 (410 ILCS 305/9) (from Ch. 111 1/2, par. 7309)

20 Sec. 9. (1) No person may disclose or be compelled to
21 disclose HIV-related information ~~the identity of any person~~
22 ~~upon whom a test is performed, or the results of such a test in~~
23 ~~a manner which permits identification of the subject of the~~
24 ~~test, except to the following persons:~~

25 (a) The subject of an HIV ~~the~~ test or the subject's legally

1 authorized representative. A physician may notify the spouse of
2 the test subject, if the test result is positive and has been
3 confirmed pursuant to rules adopted by the Department, provided
4 that the physician has first sought unsuccessfully to persuade
5 the patient to notify the spouse or that, a reasonable time
6 after the patient has agreed to make the notification, the
7 physician has reason to believe that the patient has not
8 provided the notification. This paragraph shall not create a
9 duty or obligation under which a physician must notify the
10 spouse of the test results, nor shall such duty or obligation
11 be implied. No civil liability or criminal sanction under this
12 Act shall be imposed for any disclosure or non-disclosure of a
13 test result to a spouse by a physician acting in good faith
14 under this paragraph. For the purpose of any proceedings, civil
15 or criminal, the good faith of any physician acting under this
16 paragraph shall be presumed.

17 (b) Any person designated in a legally effective
18 authorization for release of the HIV-related information ~~test~~
19 ~~results~~ executed by the subject of the HIV-related information
20 ~~test~~ or the subject's legally authorized representative.

21 (c) An authorized agent or employee of a health facility or
22 health care provider if the health facility or health care
23 provider itself is authorized to obtain the test results, the
24 agent or employee provides patient care or handles or processes
25 specimens of body fluids or tissues, and the agent or employee
26 has a need to know such information.

1 (d) The Department and local health authorities serving a
2 population of over 1,000,000 residents or other local health
3 authorities as designated by the Department, in accordance with
4 rules for reporting, preventing, and controlling the spread of
5 disease and the conduct of public health surveillance, public
6 health investigations, and public health interventions, as
7 otherwise provided by State law. The Department, local health
8 authorities, and authorized representatives shall not disclose
9 HIV test results and HIV-related information ~~and records held~~
10 ~~by them relating to known or suspected cases of AIDS or HIV~~
11 ~~infection~~, publicly or in any action of any kind in any court
12 or before any tribunal, board, or agency. HIV test results and
13 HIV-related information ~~AIDS and HIV infection data~~ shall be
14 protected from disclosure in accordance with the provisions of
15 Sections 8-2101 through 8-2105 of the Code of Civil Procedure.

16 (e) A health facility, ~~or~~ health care provider, or health
17 care professional which procures, processes, distributes or
18 uses: (i) a human body part from a deceased person with respect
19 to medical information regarding that person; or (ii) semen
20 provided prior to the effective date of this Act for the
21 purpose of artificial insemination.

22 (f) Health facility staff committees for the purposes of
23 conducting program monitoring, program evaluation or service
24 reviews.

25 (f-5) A court in accordance with the provisions of Section
26 12-5.01 of the Criminal Code of 2012.

1 (g) (Blank).

2 (h) Any health care provider or employee of a health
3 facility, and any firefighter or EMT-A, EMT-P, or EMT-I,
4 involved in an accidental direct skin or mucous membrane
5 contact with the blood or bodily fluids of an individual which
6 is of a nature that may transmit HIV, as determined by a
7 physician in his medical judgment.

8 (i) Any law enforcement officer, as defined in subsection
9 (c) of Section 7, involved in the line of duty in a direct skin
10 or mucous membrane contact with the blood or bodily fluids of
11 an individual which is of a nature that may transmit HIV, as
12 determined by a physician in his medical judgment.

13 (j) A temporary caretaker of a child taken into temporary
14 protective custody by the Department of Children and Family
15 Services pursuant to Section 5 of the Abused and Neglected
16 Child Reporting Act, as now or hereafter amended.

17 (k) In the case of a minor under 18 years of age whose test
18 result is positive and has been confirmed pursuant to rules
19 adopted by the Department, the health care professional
20 ~~provider~~ who ordered the test shall make a reasonable effort to
21 notify the minor's parent or legal guardian if, in the
22 professional judgment of the health care professional
23 ~~provider~~, notification would be in the best interest of the
24 child and the health care professional ~~provider~~ has first
25 sought unsuccessfully to persuade the minor to notify the
26 parent or legal guardian or a reasonable time after the minor

1 has agreed to notify the parent or legal guardian, the health
2 care professional ~~provider~~ has reason to believe that the minor
3 has not made the notification. This subsection shall not create
4 a duty or obligation under which a health care professional
5 ~~provider~~ must notify the minor's parent or legal guardian of
6 the test results, nor shall a duty or obligation be implied. No
7 civil liability or criminal sanction under this Act shall be
8 imposed for any notification or non-notification of a minor's
9 test result by a health care professional ~~provider~~ acting in
10 good faith under this subsection. For the purpose of any
11 proceeding, civil or criminal, the good faith of any health
12 care professional ~~provider~~ acting under this subsection shall
13 be presumed.

14 (2) All information and records held by a State agency,
15 local health authority, or health oversight agency pertaining
16 to HIV-related information shall be strictly confidential and
17 exempt from copying and inspection under the Freedom of
18 Information Act. The information and records shall not be
19 released or made public by the State agency, local health
20 authority, or health oversight agency, shall not be admissible
21 as evidence nor discoverable in any action of any kind in any
22 court or before any tribunal, board, agency, or person, and
23 shall be treated in the same manner as the information and
24 those records subject to the provisions of Part 21 of Article
25 VIII of the Code of Civil Procedure, except under the following
26 circumstances:

1 (A) when made with the written consent of all persons
2 to whom the information pertains; or

3 (B) when authorized by Section 5-4-3 of the Unified
4 Code of Corrections.

5 Disclosure shall be limited to those who have a need to
6 know the information, and no additional disclosures may be
7 made.

8 (Source: P.A. 96-328, eff. 8-11-09; 97-1046, eff. 8-21-12;
9 97-1150, eff. 1-25-13.)

10 (410 ILCS 305/9.1 new)

11 Sec. 9.1. Uses and disclosures for treatment, payment, and
12 health care operations. Notwithstanding Sections 9 and 10 of
13 this Act, a covered entity may, without a patient's consent:

14 (1) use or disclose HIV-related information for its own
15 treatment, payment, or health care operations;

16 (2) disclose HIV-related information for treatment
17 activities of a health care provider;

18 (3) disclose HIV-related information to another
19 covered entity or health care provider for the payment
20 activities of the entity that receives the information;

21 (4) disclose HIV-related information to another
22 covered entity for health care operations activities of the
23 entity that receives the information, if each entity has or
24 had a relationship with the individual who is the subject
25 of the HIV-related information being requested, the

1 HIV-related information pertains to such relationship, and
2 the disclosure is for the purpose of (A) conducting quality
3 assessment and improvement activities, including outcomes
4 evaluation and development of clinical guidelines,
5 provided that the obtaining of generalizable knowledge is
6 not the primary purpose of any studies resulting from such
7 activities; patient safety activities; population-based
8 activities relating to improving health or reducing health
9 care costs, protocol development, case management, and
10 care coordination, contacting of health care providers and
11 patients with information about treatment alternatives;
12 and related functions that do not include treatment; (B)
13 reviewing the competence or qualifications of health care
14 professionals, evaluating practitioner and provider
15 performance, health plan performance, conducting training
16 programs in which students, trainees, or practitioners in
17 areas of health care learn under supervision to practice or
18 improve their skills as health care providers, training of
19 non-health care professionals, accreditation,
20 certification, licensing, or credentialing activities; or
21 (C) health care fraud and abuse detection or compliance;
22 and

23 (5) disclose HIV-related information to other
24 participants in an organized health care arrangement in
25 which the covered entity is also a participant for any
26 health care operations activities of the organized health

1 care arrangement.

2 (410 ILCS 305/9.2 new)

3 Sec. 9.2. Uses and disclosures for health oversight
4 activities.

5 (a) Notwithstanding Sections 9 and 10 of this Act, a
6 covered entity may disclose HIV-related information, without a
7 patient's consent, to a health oversight agency for health
8 oversight activities authorized by law, including audits,
9 civil, administrative, or criminal investigations;
10 inspections; licensure or disciplinary actions; civil
11 administrative or criminal proceedings or actions; or other
12 activities necessary for appropriate oversight of (i) the
13 health care system; (ii) government benefit programs for which
14 health information is relevant to beneficiary eligibility;
15 (iii) entities subject to government regulatory programs for
16 which health information is necessary for determining
17 compliance with program standards; or (iv) entities subject to
18 civil rights laws for which health information is necessary for
19 determining compliance.

20 (b) For purposes of the disclosures permitted by this
21 Section, a health oversight activity does not include an
22 investigation or other activity in which the individual is the
23 subject of the investigation or activity and such investigation
24 or other activity does not arise out of and is not directly
25 related to (i) the receipt of health care; (ii) a claim for

1 public benefits related to health; or (iii) qualification for,
2 or receipt of, public benefits or services when a patient's
3 health is integral to the claim for public benefits or
4 services, except that, if a health oversight activity or
5 investigation is conducted in conjunction with an oversight
6 activity or investigation relating to a claim for public
7 benefits not related to health, the joint activity or
8 investigation is considered a health oversight activity for
9 purposes of this Section.

10 (c) If a covered entity is also a health oversight agency,
11 the covered entity may use HIV-related information for health
12 oversight activities permitted by this Section.

13 (410 ILCS 305/9.3 new)

14 Sec. 9.3. Business associates.

15 (a) Notwithstanding Sections 9 and 10 of this Act, a
16 covered entity may, without a patient's consent, disclose a
17 patient's HIV-related information to a business associate and
18 may allow a business associate to create, receive, maintain, or
19 transmit protected health information on its behalf, if the
20 covered entity obtains, through a written contract or other
21 written agreement or arrangement that meets the applicable
22 requirements of 45 CFR 164.504(e), satisfactory assurance that
23 the business associate will appropriately safeguard the
24 information. A covered entity is not required to obtain such
25 satisfactory assurances from a business associate that is a

1 subcontractor.

2 (b) A business associate may disclose protected health
3 information to a business associate that is a subcontractor and
4 may allow the subcontractor to create, receive, maintain, or
5 transmit protected health information on its behalf, if the
6 business associate obtains satisfactory assurances, in
7 accordance with 45 CFR 164.504(e)(1)(i), that the
8 subcontractor will appropriately safeguard the information.

9 (410 ILCS 305/9.4 new)

10 Sec. 9.4. Use and disclosure of information to an HIE.
11 Notwithstanding the provisions of Section 9 and 10 of this Act,
12 a covered entity may, without a patient's consent, disclose the
13 identity of any patient upon whom a test is performed and such
14 patient's HIV-related information from a patient's record to an
15 HIE if the disclosure is a required or permitted disclosure to
16 a business associate or is a disclosure otherwise required or
17 permitted under this Act. An HIE may, without a patient's
18 consent, use or disclose such information to the extent it is
19 allowed to use or disclose such information as a business
20 associate in compliance with 45 CFR 164.502(e) or for such
21 other purposes as are specifically allowed under this Act.

22 (410 ILCS 305/9.4a new)

23 Sec. 9.4a. Other disclosures. Nothing in this Act shall be
24 construed (1) to limit the use of an HIE to facilitate

1 disclosures permitted by this Act or (2) to allow for the
2 disclosure of information from a patient's record to law
3 enforcement or for law enforcement purposes.

4 (410 ILCS 305/9.6 new)

5 Sec. 9.6. HIE opt out. Section 9.6 of the Mental Health and
6 Developmental Disabilities Confidentiality Act is incorporated
7 herein by reference. In addition to the requirements set out in
8 Section 9.6 of the Mental Health and Developmental Disabilities
9 Confidentiality Act, at the time of a patient's first encounter
10 for HIV-related care with a health care provider, health care
11 professional, or health facility that participates in an HIE,
12 or, in the event of a medical emergency that makes it
13 impossible, as soon thereafter as is practicable, the patient
14 shall receive meaningful disclosure regarding the HIE in which
15 the health care provider, health care professional, or health
16 facility participates and shall be afforded an opportunity to
17 opt out of disclosure of the patient's health information
18 through the HIE.

19 (410 ILCS 305/9.7 new)

20 Sec. 9.7. Record locator service to support HIE. Section
21 9.9 of the Mental Health and Developmental Disabilities and
22 Confidentiality Act is herein incorporated by reference.

23 (410 ILCS 305/9.8 new)

1 Sec. 9.8. Disclosure of limited data sets and de-identified
2 information. Notwithstanding the provisions of Section 9 and 10
3 of this Act:

4 (1) a covered entity may, without a patient's consent,
5 create, use, and disclose a limited data set using
6 HIV-related information from a patient's record or
7 disclose HIV-related information from a patient's record
8 to a business associate for the purpose of establishing a
9 limited data set; the creation, use, and disclosure of such
10 a limited data set must comply with the requirements set
11 forth under HIPAA;

12 (2) a covered entity may, without a patient's consent,
13 create, use, and disclose de-identified information using
14 information from a patient's record that is subject to this
15 Act or disclose HIV-related information from a patient's
16 record to a business associate for the purpose
17 de-identifying the information; the creation, use, and
18 disclosure of such de-identified data must comply with the
19 requirements set forth under HIPAA. A covered entity or a
20 business associate may disclose information that is
21 de-identified; and

22 (3) the recipient of de-identified information shall
23 not re-identify de-identified information using any public
24 or private data source.

1 Sec. 9.9. Research. HIV-related information may be
2 disclosed for research in accordance with the requirements set
3 forth under HIPAA.

4 (410 ILCS 305/9.10 new)

5 Sec. 9.10. Minimum necessary. When using and disclosing
6 HIV-related information under this Act, a covered entity shall
7 do so in accordance with the minimum necessary standard under
8 HIPAA.

9 (410 ILCS 305/10) (from Ch. 111 1/2, par. 7310)

10 Sec. 10. No person to whom the results of a test have been
11 disclosed may disclose the test results to another person
12 except as authorized under this Act ~~by Section 9.~~

13 (Source: P.A. 85-677; 85-679.)

14 (410 ILCS 305/16) (from Ch. 111 1/2, par. 7316)

15 Sec. 16. The Department shall promulgate rules and
16 regulations concerning implementation and enforcement of this
17 Act, except to the extent that this Act delegates to the
18 Authority the promulgation or adoption of any rules,
19 regulations, standards, or contractual obligations. The rules
20 and regulations promulgated by the Department pursuant to this
21 Act may include procedures for taking appropriate action with
22 regard to health care facilities or health care providers which
23 violate this Act or the regulations promulgated hereunder. The

1 provisions of The Illinois Administrative Procedure Act shall
2 apply to all administrative rules and procedures of the
3 Department pursuant to this Act, except that in case of
4 conflict between The Illinois Administrative Procedure Act and
5 this Act, the provisions of this Act shall control. The
6 Department shall conduct training, technical assistance, and
7 outreach activities, as needed, to implement routine HIV
8 testing in healthcare medical settings.

9 (Source: P.A. 95-7, eff. 6-1-08.)

10 Section 15. The Genetic Information Privacy Act is amended
11 by changing Sections 5, 10, 20, 25, 30, 35, and 40 and by
12 adding Sections 31, 31.1, 31.2, 31.3, 31.4, 31.5, 31.6, 31.7,
13 31.8, and 31.9 as follows:

14 (410 ILCS 513/5)

15 Sec. 5. Legislative findings; intent. The General Assembly
16 finds that:

17 (1) The use of genetic testing can be valuable to an
18 individual.

19 (2) Despite existing laws, regulations, and
20 professional standards which require or promote voluntary
21 and confidential use of genetic testing information, many
22 members of the public are deterred from seeking genetic
23 testing because of fear that test results will be disclosed
24 without consent in a manner not permitted by law or will be

1 used in a discriminatory manner.

2 (3) The public health will be served by facilitating
3 voluntary and confidential nondiscriminatory use of
4 genetic testing information.

5 (4) The use of electronic health record systems and the
6 exchange of patient records, both paper and electronic,
7 through secure means, including through secure health
8 information exchanges, should be encouraged to improve
9 patient health care and care coordination, facilitate
10 public health reporting, and control health care costs,
11 among other purposes.

12 (5) Limiting the use or disclosure of, and requests
13 for, protected health information to the minimum necessary
14 to accomplish an intended purpose, when being transmitted
15 by or on behalf of a covered entity under HIPAA, is a key
16 component of health information privacy. The disclosure of
17 genetic information, when allowed by this Act, shall be
18 performed in accordance with the minimum necessary
19 standard when required under HIPAA.

20 (Source: P.A. 90-25, eff. 1-1-98.)

21 (410 ILCS 513/10)

22 Sec. 10. Definitions. As used in this Act:

23 "Authority" means the Illinois Health Information Exchange
24 Authority established pursuant to the Illinois Health
25 Information Exchange and Technology Act.

1 "Business associate" has the meaning ascribed to it under
2 HIPAA, as specified in 45 CFR 160.103.

3 "Covered entity" has the meaning ascribed to it under
4 HIPAA, as specified in 45 CFR 160.103.

5 "De-identified information" means health information that
6 is not individually identifiable as described under HIPAA, as
7 specified in 45 CFR 164.514(b).

8 "Disclosure" has the meaning ascribed to it under HIPAA, as
9 specified in 45 CFR 160.103.

10 "Employer" means the State of Illinois, any unit of local
11 government, and any board, commission, department,
12 institution, or school district, any party to a public
13 contract, any joint apprenticeship or training committee
14 within the State, and every other person employing employees
15 within the State.

16 "Employment agency" means both public and private
17 employment agencies and any person, labor organization, or
18 labor union having a hiring hall or hiring office regularly
19 undertaking, with or without compensation, to procure
20 opportunities to work, or to procure, recruit, refer, or place
21 employees.

22 "Family member" means, with respect to an individual, (i)
23 the spouse of the individual; (ii) a dependent child of the
24 individual, including a child who is born to or placed for
25 adoption with the individual; (iii) any other person qualifying
26 as a covered dependent under a managed care plan; and (iv) all

1 other individuals related by blood or law to the individual or
2 the spouse or child described in subsections (i) through (iii)
3 of this definition.

4 "Genetic information" has the meaning ascribed to it under
5 HIPAA, as specified in 45 CFR 160.103. ~~means, with respect to~~
6 ~~any individual, information about (i) the individual's genetic~~
7 ~~tests; (ii) the genetic tests of a family member of the~~
8 ~~individual; and (iii) the manifestation or possible~~
9 ~~manifestation of a disease or disorder in a family member of~~
10 ~~the individual. Genetic information does not include~~
11 ~~information about the sex or age of any individual.~~

12 "Genetic monitoring" means the periodic examination of
13 employees to evaluate acquired modifications to their genetic
14 material, such as chromosomal damage or evidence of increased
15 occurrence of mutations that may have developed in the course
16 of employment due to exposure to toxic substances in the
17 workplace in order to identify, evaluate, and respond to
18 effects of or control adverse environmental exposures in the
19 workplace.

20 "Genetic services" has the meaning ascribed to it under
21 HIPAA, as specified in 45 CFR 160.103 ~~means a genetic test,~~
22 ~~genetic counseling, including obtaining, interpreting, or~~
23 ~~assessing genetic information, or genetic education.~~

24 "Genetic testing" and "genetic test" have the meaning
25 ascribed to "genetic test" under HIPAA, as specified in 45 CFR
26 160.103. ~~mean a test or analysis of human genes, gene products,~~

1 ~~DNA, RNA, chromosomes, proteins, or metabolites that detect~~
2 ~~genotypes, mutations, chromosomal changes, abnormalities, or~~
3 ~~deficiencies, including carrier status, that (i) are linked to~~
4 ~~physical or mental disorders or impairments, (ii) indicate a~~
5 ~~susceptibility to illness, disease, impairment, or other~~
6 ~~disorders, whether physical or mental, or (iii) demonstrate~~
7 ~~genetic or chromosomal damage due to environmental factors.~~
8 ~~Genetic testing and genetic tests do not include routine~~
9 ~~physical measurements; chemical, blood and urine analyses that~~
10 ~~are widely accepted and in use in clinical practice; tests for~~
11 ~~use of drugs; tests for the presence of the human~~
12 ~~immunodeficiency virus; analyses of proteins or metabolites~~
13 ~~that do not detect genotypes, mutations, chromosomal changes,~~
14 ~~abnormalities, or deficiencies; or analyses of proteins or~~
15 ~~metabolites that are directly related to a manifested disease,~~
16 ~~disorder, or pathological condition that could reasonably be~~
17 ~~detected by a health care professional with appropriate~~
18 ~~training and expertise in the field of medicine involved.~~

19 "Health care operations" has the meaning ascribed to it
20 under HIPAA, as specified in 45 CFR 164.501.

21 "Health care professional" means (i) a licensed physician,
22 (ii) a physician assistant to whom the physician assistant's
23 supervising physician has delegated the provision of genetic
24 testing or genetic counseling-related services, (iii) an
25 advanced practice registered nurse who has a written
26 collaborative agreement with a collaborating physician which

1 authorizes the provision of genetic testing or genetic
2 counseling-related health services, (iv) a licensed dentist,
3 (v) a licensed podiatrist, (vi) a licensed genetic counselor,
4 or (vii) an individual certified to provide genetic testing by
5 a state or local public health department.

6 "Health care provider" has the meaning ascribed to it under
7 HIPAA, as specified in 45 CFR 160.103.

8 "Health facility" means a hospital, blood bank, blood
9 center, sperm bank, or other health care institution, including
10 any "health facility" as that term is defined in the Illinois
11 Finance Authority Act.

12 "Health information exchange" or "HIE" means a health
13 information exchange or health information organization that
14 exchanges health information electronically that (i) is
15 established pursuant to the Illinois Health Information
16 Exchange and Technology Act, or any subsequent amendments
17 thereto, and any administrative rules promulgated thereunder;
18 (ii) has established a data sharing arrangement with the
19 Authority; or (iii) as of August 16, 2013, was designated by
20 the Authority Board as a member of, or was represented on, the
21 Authority Board's Regional Health Information Exchange
22 Workgroup. In certain circumstances, in accordance with HIPAA,
23 an HIE will be a business associate.

24 "Health oversight agency" has the meaning ascribed to it
25 under HIPAA, as specified in 45 CFR 164.501.

26 "HIPAA" means the Health Insurance Portability and

1 Accountability Act of 1996, Public Law 104-191, as amended by
2 the Health Information Technology for Economic and Clinical
3 Health Act of 2009, Public Law 111-05, and any subsequent
4 amendments thereto and any regulations promulgated thereunder.

5 "Insurer" means (i) an entity that is subject to the
6 jurisdiction of the Director of Insurance ~~transacts an~~
7 ~~insurance business~~ and (ii) a managed care plan.

8 "Labor organization" includes any organization, labor
9 union, craft union, or any voluntary unincorporated
10 association designed to further the cause of the rights of
11 union labor that is constituted for the purpose, in whole or in
12 part, of collective bargaining or of dealing with employers
13 concerning grievances, terms or conditions of employment, or
14 apprenticeships or applications for apprenticeships, or of
15 other mutual aid or protection in connection with employment,
16 including apprenticeships or applications for apprenticeships.

17 "Licensing agency" means a board, commission, committee,
18 council, department, or officers, except a judicial officer, in
19 this State or any political subdivision authorized to grant,
20 deny, renew, revoke, suspend, annul, withdraw, or amend a
21 license or certificate of registration.

22 "Limited data set" has the meaning ascribed to it under
23 HIPAA, as described in 45 CFR 164.512(e) (2).

24 ~~"Labor organization" includes any organization, labor~~
25 ~~union, craft union, or any voluntary unincorporated~~
26 ~~association designed to further the cause of the rights of~~

1 ~~union labor that is constituted for the purpose, in whole or in~~
2 ~~part, of collective bargaining or of dealing with employers~~
3 ~~concerning grievances, terms or conditions of employment, or~~
4 ~~apprenticeships or applications for apprenticeships, or of~~
5 ~~other mutual aid or protection in connection with employment,~~
6 ~~including apprenticeships or applications for apprenticeships.~~

7 "Managed care plan" means a plan that establishes,
8 operates, or maintains a network of health care providers that
9 have entered into agreements with the plan to provide health
10 care services to enrollees where the plan has the ultimate and
11 direct contractual obligation to the enrollee to arrange for
12 the provision of or pay for services through:

13 (1) organizational arrangements for ongoing quality
14 assurance, utilization review programs, or dispute
15 resolution; or

16 (2) financial incentives for persons enrolled in the
17 plan to use the participating providers and procedures
18 covered by the plan.

19 A managed care plan may be established or operated by any
20 entity including a licensed insurance company, hospital or
21 medical service plan, health maintenance organization, limited
22 health service organization, preferred provider organization,
23 third party administrator, or an employer or employee
24 organization.

25 "Minimum necessary" means HIPAA's standard for using,
26 disclosing, and requesting protected health information found

1 in 45 CFR 164.502(b) and 164.514(d).

2 "Nontherapeutic purpose" means a purpose that is not
3 intended to improve or preserve the life or health of the
4 individual whom the information concerns.

5 "Organized health care arrangement" has the meaning
6 ascribed to it under HIPAA, as specified in 45 CFR 160.103.

7 "Patient safety activities" has the meaning ascribed to it
8 under 42 CFR 3.20.

9 "Payment" has the meaning ascribed to it under HIPAA, as
10 specified in 45 CFR 164.501.

11 "Person" includes any natural person, partnership,
12 association, joint venture, trust, governmental entity, public
13 or private corporation, health facility, or other legal entity.

14 "Protected health information" has the meaning ascribed to
15 it under HIPAA, as specified in 45 CFR 164.103.

16 "Research" has the meaning ascribed to it under HIPAA, as
17 specified in 45 CFR 164.501.

18 "State agency" means an instrumentality of the State of
19 Illinois and any instrumentality of another state which
20 pursuant to applicable law or a written undertaking with an
21 instrumentality of the State of Illinois is bound to protect
22 the privacy of genetic information of Illinois persons.

23 "Treatment" has the meaning ascribed to it under HIPAA, as
24 specified in 45 CFR 164.501.

25 "Use" has the meaning ascribed to it under HIPAA, as
26 specified in 45 CFR 160.103, where context dictates.

1 (Source: P.A. 95-927, eff. 1-1-09.)

2 (410 ILCS 513/20)

3 Sec. 20. Use of genetic testing information for insurance
4 purposes.

5 (a) An insurer may not seek information derived from
6 genetic testing for use in connection with a policy of accident
7 and health insurance. Except as provided in subsection (c) ~~(b)~~,
8 an insurer that receives information derived from genetic
9 testing, regardless of the source of that information, may not
10 use the information for a nontherapeutic purpose as it relates
11 to a policy of accident and health insurance.

12 (b) An insurer shall not use or disclose protected health
13 information that is genetic information for underwriting
14 purposes. For purposes of this Section, "underwriting
15 purposes" means, with respect to an insurer:

16 (1) rules for, or determination of, eligibility
17 (including enrollment and continued eligibility) for, or
18 determination of, benefits under the plan, coverage, or
19 policy (including changes in deductibles or other
20 cost-sharing mechanisms in return for activities such as
21 completing a health risk assessment or participating in a
22 wellness program);

23 (2) the computation of premium or contribution amounts
24 under the plan, coverage, or policy (including discounts,
25 rebates, payments in kind, or other premium differential

1 mechanisms in return for activities, such as completing a
2 health risk assessment or participating in a wellness
3 program);

4 (3) the application of any pre-existing condition
5 exclusion under the plan, coverage, or policy; and

6 (4) other activities related to the creation, renewal,
7 or replacement of a contract of health insurance or health
8 benefits.

9 "Underwriting purposes" does not include determinations of
10 medical appropriateness where an individual seeks a benefit
11 under the plan, coverage, or policy.

12 This subsection (b) does not apply to insurers that are
13 issuing a long-term care policy, excluding a nursing home fixed
14 indemnity plan.

15 (c) ~~(b)~~ An insurer may consider the results of genetic
16 testing in connection with a policy of accident and health
17 insurance if the individual voluntarily submits the results and
18 the results are favorable to the individual.

19 (d) ~~(e)~~ An insurer that possesses information derived from
20 genetic testing may not release the information to a third
21 party, except as specified in this Act ~~Section 30~~.

22 (Source: P.A. 92-430, eff. 8-17-01.)

23 (410 ILCS 513/25)

24 Sec. 25. Use of genetic testing information by employers.

25 (a) An employer, employment agency, labor organization,

1 and licensing agency shall treat genetic testing and genetic
2 information in such a manner that is consistent with the
3 requirements of federal law, including but not limited to the
4 Genetic Information Nondiscrimination Act of 2008, the
5 Americans with Disabilities Act, Title VII of the Civil Rights
6 Act of 1964, the Family and Medical Leave Act of 1993, the
7 Occupational Safety and Health Act of 1970, the Federal Mine
8 Safety and Health Act of 1977, or the Atomic Energy Act of
9 1954.

10 (b) An employer may release genetic testing information
11 only in accordance with ~~Sections 15 and 30 of~~ this Act.

12 (c) An employer, employment agency, labor organization,
13 and licensing agency shall not directly or indirectly do any of
14 the following:

15 (1) solicit, request, require or purchase genetic
16 testing or genetic information of a person or a family
17 member of the person, or administer a genetic test to a
18 person or a family member of the person as a condition of
19 employment, preemployment application, labor organization
20 membership, or licensure;

21 (2) affect the terms, conditions, or privileges of
22 employment, preemployment application, labor organization
23 membership, or licensure, or terminate the employment,
24 labor organization membership, or licensure of any person
25 because of genetic testing or genetic information with
26 respect to the employee or family member, or information

1 about a request for or the receipt of genetic testing by
2 such employee or family member of such employee;

3 (3) limit, segregate, or classify employees in any way
4 that would deprive or tend to deprive any employee of
5 employment opportunities or otherwise adversely affect the
6 status of the employee as an employee because of genetic
7 testing or genetic information with respect to the employee
8 or a family member, or information about a request for or
9 the receipt of genetic testing or genetic information by
10 such employee or family member of such employee; and

11 (4) retaliate through discharge or in any other manner
12 against any person alleging a violation of this Act or
13 participating in any manner in a proceeding under this Act.

14 (d) An agreement between a person and an employer,
15 prospective employer, employment agency, labor organization,
16 or licensing agency, or its employees, agents, or members
17 offering the person employment, labor organization membership,
18 licensure, or any pay or benefit in return for taking a genetic
19 test is prohibited.

20 (e) An employer shall not use genetic information or
21 genetic testing in furtherance of a workplace wellness program
22 benefiting employees unless (1) health or genetic services are
23 offered by the employer, (2) the employee provides written
24 authorization ~~and informed consent~~ in accordance with Section
25 30 of this Act, (3) only the employee or family member if the
26 family member is receiving genetic services and the licensed

1 health care professional or licensed genetic counselor
2 involved in providing such services receive individually
3 identifiable information concerning the results of such
4 services, and (4) any individually identifiable information is
5 only available for purposes of such services and shall not be
6 disclosed to the employer except in aggregate terms that do not
7 disclose the identity of specific employees.

8 (f) Nothing in this Act shall be construed to prohibit
9 genetic testing of an employee who requests a genetic test and
10 who provides written authorization ~~and informed consent~~, in
11 accordance with Section 30 of this Act, from taking a genetic
12 test for the purpose of initiating a workers' compensation
13 claim under the Workers' Compensation Act.

14 (g) A purchase of commercially and publicly available
15 documents, including newspapers, magazines, periodicals, and
16 books but not including medical databases or court records or
17 inadvertently requesting family medical history by an
18 employer, employment agency, labor organization, and licensing
19 agency does not violate this Act.

20 (h) Nothing in this Act shall be construed to prohibit an
21 employer that conducts DNA analysis for law enforcement
22 purposes as a forensic laboratory and that includes such
23 analysis in the Combined DNA Index System pursuant to the
24 federal Violent Crime Control and Law Enforcement Act of 1994
25 from requesting or requiring genetic testing or genetic
26 information of such employer's employees, but only to the

1 extent that such genetic testing or genetic information is used
2 for analysis of DNA identification markers for quality control
3 to detect sample contamination.

4 (i) Nothing in this Act shall be construed to prohibit an
5 employer from requesting or requiring genetic information to be
6 used for genetic monitoring of the biological effects of toxic
7 substances in the workplace, but only if (1) the employer
8 provides written notice of the genetic monitoring to the
9 employee; (2) the employee provides written authorization ~~and~~
10 ~~informed consent~~ under Section 30 of this Act or the genetic
11 monitoring is required by federal or State law; (3) the
12 employee is informed of individual monitoring results; (4) the
13 monitoring is in compliance with any federal genetic monitoring
14 regulations or State genetic monitoring regulations under the
15 authority of the federal Occupational Safety and Health Act of
16 1970; and (5) the employer, excluding any health care provider,
17 ~~licensed~~ health care professional, or health facility ~~licensed~~
18 ~~genetic counselor~~ that is involved in the genetic monitoring
19 program, receives the results of the monitoring only in
20 aggregate terms that do not disclose the identity of specific
21 employees.

22 (j) Despite lawful acquisition of genetic testing or
23 genetic information under subsections (e) through (i) of this
24 Section, an employer, employment agency, labor organization,
25 and licensing agency still may not use or disclose the genetic
26 test or genetic information in violation of this Act.

1 (k) Except as provided in subsections (e), (f), (h), and
2 (i) of this Section, a person shall not knowingly sell to or
3 interpret for an employer, employment agency, labor
4 organization, or licensing agency, or its employees, agents, or
5 members, a genetic test of an employee, labor organization
6 member, or license holder, or of a prospective employee,
7 member, or license holder.

8 (Source: P.A. 95-927, eff. 1-1-09.)

9 (410 ILCS 513/30)

10 Sec. 30. Disclosure of person tested and test results.

11 (a) No person may disclose or be compelled to disclose the
12 identity of any person upon whom a genetic test is performed or
13 the results of a genetic test in a manner that permits
14 identification of the subject of the test, except to the
15 following persons:

16 (1) The subject of the test or the subject's legally
17 authorized representative. This paragraph does not create
18 a duty or obligation under which a health care provider
19 must notify the subject's spouse or legal guardian of the
20 test results, and no such duty or obligation shall be
21 implied. No civil liability or criminal sanction under this
22 Act shall be imposed for any disclosure or nondisclosure of
23 a test result to a spouse by a physician acting in good
24 faith under this paragraph. For the purpose of any
25 proceedings, civil or criminal, the good faith of any

1 physician acting under this paragraph shall be presumed.

2 (2) Any person designated in a specific written legally
3 effective authorization for release ~~release~~ of the test
4 results executed by the subject of the test or the
5 subject's legally authorized representative.

6 (3) An authorized agent or employee of a health
7 facility or health care provider if the health facility or
8 health care provider itself is authorized to obtain the
9 test results, the agent or employee provides patient care,
10 and the agent or employee has a need to know the
11 information in order to conduct the tests or provide care
12 or treatment.

13 (4) A health facility, ~~or~~ health care provider, or
14 health care professional that procures, processes,
15 distributes, or uses:

16 (A) a human body part from a deceased person with
17 respect to medical information regarding that person;
18 or

19 (B) semen provided prior to the effective date of
20 this Act for the purpose of artificial insemination.

21 (5) Health facility staff committees for the purposes
22 of conducting program monitoring, program evaluation, or
23 service reviews.

24 (6) In the case of a minor under 18 years of age, the
25 health care provider, health care professional, or health
26 facility who ordered the test shall make a reasonable

1 effort to notify the minor's parent or legal guardian if,
2 in the professional judgment of the health care provider,
3 health care professional, or health facility, notification
4 would be in the best interest of the minor and the health
5 care provider, health care professional, or health
6 facility has first sought unsuccessfully to persuade the
7 minor to notify the parent or legal guardian or after a
8 reasonable time after the minor has agreed to notify the
9 parent or legal guardian, the health care provider, health
10 care professional, or health facility has reason to believe
11 that the minor has not made the notification. This
12 paragraph shall not create a duty or obligation under which
13 a health care provider, health care professional, or health
14 facility must notify the minor's parent or legal guardian
15 of the test results, nor shall a duty or obligation be
16 implied. No civil liability or criminal sanction under this
17 Act shall be imposed for any notification or
18 non-notification of a minor's test result by a health care
19 provider, health care professional, or health facility
20 acting in good faith under this paragraph. For the purpose
21 of any proceeding, civil or criminal, the good faith of any
22 health care provider, health care professional, or health
23 facility acting under this paragraph shall be presumed.

24 (b) (7) All information and records held by a State agency,
25 ~~or~~ local health authority, or health oversight agency
26 pertaining to genetic information shall be strictly

1 confidential and exempt from copying and inspection under the
2 Freedom of Information Act. The information and records shall
3 not be released or made public by the State agency, ~~or~~ local
4 health authority, or health oversight agency and shall not be
5 admissible as evidence nor discoverable in any action of any
6 kind in any court or before any tribunal, board, agency, or
7 person and shall be treated in the same manner as the
8 information and those records subject to the provisions of Part
9 21 of Article VIII of the Code of Civil Procedure except under
10 the following circumstances:

11 (A) when made with the written consent of all
12 persons to whom the information pertains;

13 (B) when authorized by Section 5-4-3 of the Unified
14 Code of Corrections;

15 (C) when made for the sole purpose of implementing
16 the Newborn Metabolic Screening Act and rules; or

17 (D) when made under the authorization of the
18 Illinois Parentage Act of 1984.

19 Disclosure shall be limited to those who have a need to
20 know the information, and no additional disclosures may be
21 made.

22 (c) ~~(b)~~ Disclosure by an insurer in accordance with the
23 requirements of the Article XL of the Illinois Insurance Code
24 shall be deemed compliance with this Section.

25 (Source: P.A. 96-328, eff. 8-11-09.)

1 (410 ILCS 513/31 new)

2 Sec. 31. Uses and disclosures for treatment, payment, and
3 health care operations. Notwithstanding Sections 30 and 35 of
4 this Act, a covered entity may, without a patient's consent:

5 (1) use or disclose genetic information for its own
6 treatment, payment, or health care operations;

7 (2) disclose genetic information for treatment activities
8 of a health care provider;

9 (3) disclose genetic information to another covered entity
10 or health care provider for the payment activities of the
11 entity that receives the information;

12 (4) disclose genetic information to another covered entity
13 for health care operations activities of the entity that
14 receives the information, if each entity has or had a
15 relationship with the individual who is the subject of the
16 genetic information being requested, the genetic information
17 pertains to such relationship, and the disclosure is for the
18 purpose of (A) conducting quality assessment and improvement
19 activities, including outcomes evaluation and development of
20 clinical guidelines, provided that the obtaining of
21 generalizable knowledge is not the primary purpose of any
22 studies resulting from such activities; patient safety
23 activities; population-based activities relating to improving
24 health or reducing health care costs, protocol development,
25 case management, and care coordination, contacting of health
26 care providers and patients with information about treatment

1 alternatives; and related functions that do not include
2 treatment; (B) reviewing the competence or qualifications of
3 health care professionals, evaluating practitioner and
4 provider performance, health plan performance, conducting
5 training programs in which students, trainees, or
6 practitioners in areas of health care learn under supervision
7 to practice or improve their skills as health care providers,
8 training of non-health care professionals, accreditation,
9 certification, licensing, or credentialing activities; or (C)
10 health care fraud and abuse detection or compliance; and

11 (5) disclose genetic information to other participants in
12 an organized health care arrangement in which the covered
13 entity is also a participant for any health care operations
14 activities of the organized health care arrangement.

15 (410 ILCS 513/31.1 new)

16 Sec. 31.1. Uses and disclosures for health oversight
17 activities.

18 (a) Notwithstanding Sections 30 and 35 of this Act, a
19 covered entity may disclose genetic information, without a
20 patient's consent, to a health oversight agency for health
21 oversight activities authorized by law, including audits,
22 civil, administrative, or criminal investigations;
23 inspections; licensure or disciplinary actions; civil
24 administrative or criminal proceedings or actions; or other
25 activities necessary for appropriate oversight of (i) the

1 health care system; (ii) government benefit programs for which
2 health information is relevant to beneficiary eligibility;
3 (iii) entities subject to government regulatory programs for
4 which health information is necessary for determining
5 compliance with program standards; or (iv) entities subject to
6 civil rights laws for which health information is necessary for
7 determining compliance.

8 (b) For purposes of the disclosures permitted by this
9 Section, a health oversight activity does not include an
10 investigation or other activity in which the individual is the
11 subject of the investigation or activity and such investigation
12 or other activity does not arise out of and is not directly
13 related to (i) the receipt of health care; (ii) a claim for
14 public benefits related to health; or (iii) qualification for,
15 or receipt of, public benefits or services when a patient's
16 health is integral to the claim for public benefits or
17 services, except that, if a health oversight activity or
18 investigation is conducted in conjunction with an oversight
19 activity or investigation relating to a claim for public
20 benefits not related to health, the joint activity or
21 investigation is considered a health oversight activity for
22 purposes of this Section.

23 (c) If a covered entity is also a health oversight agency,
24 the covered entity may use genetic information for health
25 oversight activities permitted by this Section.

1 (410 ILCS 513/31.2 new)

2 Sec. 31.2. Uses and disclosures for public health
3 activities. Notwithstanding Sections 30 and 35 of this Act,
4 genetic information may be disclosed without a patient's
5 consent for public health activities and purposes to the
6 Department, when the Department is authorized by law to collect
7 or receive such information for the purpose of preventing or
8 controlling disease, injury, or disability, including, but not
9 limited to, the reporting of disease, injury, vital events such
10 as birth or death, and the conduct of public health
11 surveillance, public health investigations, and public health
12 interventions.

13 (410 ILCS 513/31.3 new)

14 Sec. 31.3. Business associates.

15 (a) Notwithstanding Sections 30 and 35 of this Act, a
16 covered entity may, without a patient's consent, disclose a
17 patient's genetic information to a business associate and may
18 allow a business associate to create, receive, maintain, or
19 transmit protected health information on its behalf, if the
20 covered entity obtains, through a written contract or other
21 written agreement or arrangement that meets the applicable
22 requirements of 45 CFR 164.504(e), satisfactory assurance that
23 the business associate will appropriately safeguard the
24 information. A covered entity is not required to obtain such
25 satisfactory assurances from a business associate that is a

1 subcontractor.

2 (b) A business associate may disclose protected health
3 information to a business associate that is a subcontractor and
4 may allow the subcontractor to create, receive, maintain, or
5 transmit protected health information on its behalf, if the
6 business associate obtains satisfactory assurances, in
7 accordance with 45 CFR 164.504(e)(1)(i), that the
8 subcontractor will appropriately safeguard the information.

9 (410 ILCS 513/31.4 new)

10 Sec. 31.4. Record locator service to support HIE. Section
11 9.9 of the Mental Health and Developmental Disabilities
12 Confidentiality Act is herein incorporated by reference.

13 (410 ILCS 513/31.5 new)

14 Sec. 31.5. Use and disclosure of information to an HIE.
15 Notwithstanding the provisions of Section 30 and 35 of this
16 Act, a covered entity may, without a patient's consent,
17 disclose the identity of any patient upon whom a test is
18 performed and such patient's genetic information from a
19 patient's record to a HIE if the disclosure is a required or
20 permitted disclosure to a business associate or is a disclosure
21 otherwise required or permitted under this Act. An HIE may,
22 without a patient's consent, use or disclose such information
23 to the extent it is allowed to use or disclose such information
24 as a business associate in compliance with 45 CFR 164.502(e) or

1 for such other purposes as are specifically allowed under this
2 Act.

3 (410 ILCS 513/31.6 new)

4 Sec. 31.6. Other disclosures. Nothing in this Act shall be
5 construed (1) to limit the use of an HIE to facilitate
6 disclosures permitted by this Act or (2) to allow for the
7 disclosure of information from a patient's record to law
8 enforcement or for law enforcement purposes.

9 (410 ILCS 513/31.7 new)

10 Sec. 31.7. Establishment and disclosure of limited data
11 sets and de-identified information.

12 (a) A covered entity may, without a genetic information
13 test subject's consent, create, use, and disclose a limited
14 data set using information subject to this Act or disclose
15 information subject to this Act to a business associate for the
16 purpose of establishing a limited data set. The creation, use,
17 and disclosure of such a limited data set must comply with the
18 requirements set forth under HIPAA.

19 (b) A covered entity may, without a genetic information
20 test subject's consent, create, use, and disclose
21 de-identified information using information subject to this
22 Act or disclose information subject to this Act to a business
23 associate for the purpose of de-identifying the information.
24 The creation, use, and disclosure of such de-identified

1 information must comply with the requirements set forth under
2 HIPAA. A covered entity or a business associate may disclose
3 information that is de-identified in accordance with HIPAA.

4 (c) The recipient of de-identified information shall not
5 re-identify de-identified information using any public or
6 private data source.

7 (410 ILCS 513/31.8 new)

8 Sec. 31.8. HIE opt out. Section 9.6 of the Mental Health
9 and Developmental Disabilities Confidentiality Act is
10 incorporated herein by reference. In addition to the
11 requirements set out in Section 9.6 of the Mental Health and
12 Developmental Disabilities Confidentiality Act, at the time of
13 a patient's first encounter for genetic testing with a health
14 care provider, health care professional, or health facility
15 that participates in an HIE, or, in the event of a medical
16 emergency that makes it impossible, as soon thereafter as is
17 practicable, the patient shall receive meaningful disclosure
18 regarding the HIE in which the health care provider, health
19 care professional, or health facility participates and shall be
20 afforded an opportunity to opt out of disclosure of the
21 patient's health information through the HIE.

22 (410 ILCS 513/31.9 new)

23 Sec. 31.9. Research. Genetic information may be disclosed
24 for research, in accordance with the requirements set forth

1 under HIPAA.

2 (410 ILCS 513/35)

3 Sec. 35. Disclosure by person to whom results have been
4 disclosed. No person to whom the results of a test have been
5 disclosed may disclose the test results to another person
6 except as authorized under this Act ~~by Section 30.~~

7 (Source: P.A. 90-25, eff. 1-1-98.)

8 (410 ILCS 513/40)

9 Sec. 40. Right of action.

10 (a) Any person aggrieved by a violation of this Act shall
11 have a right of action in a State circuit court or as a
12 supplemental claim in a federal district court against an
13 offending party. A prevailing party may recover for each
14 violation:

15 (1) Against any party who negligently violates a
16 provision of this Act, liquidated damages of \$2,500 or
17 actual damages, whichever is greater.

18 (2) Against any party who intentionally or recklessly
19 violates a provision of this Act, liquidated damages of
20 \$15,000 or actual damages, whichever is greater.

21 (3) Reasonable attorney's fees and costs, including
22 expert witness fees and other litigation expenses.

23 (4) Such other relief, including an injunction, as the
24 State or federal court may deem appropriate.

1 (b) Article XL of the Illinois Insurance Code shall provide
2 the exclusive remedy for violations of Section 30 by insurers.

3 (c) Notwithstanding any provisions of the law to the
4 contrary, any person alleging a violation of subsection (a) of
5 Section 15, subsection (b) of Section 25, Section 30, Section
6 31, or Section 35 of this Act shall have a right of action in a
7 State circuit court or as a supplemental claim in a federal
8 district court to seek a preliminary injunction preventing the
9 release or disclosure of genetic testing or genetic information
10 pending the final resolution of any action under this Act.

11 (Source: P.A. 95-927, eff. 1-1-09.)

12 Section 20. The Unified Code of Corrections is amended by
13 changing Sections 3-8-2 and 3-10-2 as follows:

14 (730 ILCS 5/3-8-2) (from Ch. 38, par. 1003-8-2)

15 Sec. 3-8-2. Social Evaluation; physical examination;
16 HIV/AIDS.

17 (a) A social evaluation shall be made of a committed
18 person's medical, psychological, educational and vocational
19 condition and history, including the use of alcohol and other
20 drugs, the circumstances of his offense, and such other
21 information as the Department may determine. The committed
22 person shall be assigned to an institution or facility in so
23 far as practicable in accordance with the social evaluation.
24 Recommendations shall be made for medical, dental,

1 psychiatric, psychological and social service treatment.

2 (b) A record of the social evaluation shall be entered in
3 the committed person's master record file and shall be
4 forwarded to the institution or facility to which the person is
5 assigned.

6 (c) Upon admission to a correctional institution each
7 committed person shall be given a physical examination. If he
8 is suspected of having a communicable disease that in the
9 judgment of the Department medical personnel requires medical
10 isolation, the committed person shall remain in medical
11 isolation until it is no longer deemed medically necessary.

12 (d) Upon arrival at a reception and classification center
13 or an inmate's final destination, the Department must provide
14 the committed person with appropriate information in writing,
15 verbally, by video or other electronic means concerning HIV and
16 AIDS. The Department shall develop the informational materials
17 in consultation with the Department of Public Health. At the
18 same time, the Department also must offer the committed person
19 the option of being tested, with no copayment, for infection
20 with human immunodeficiency virus (HIV). Pre-test information
21 shall be provided to the committed person and informed consent
22 obtained as required in subsection (g) ~~(d)~~ of Section 3 and
23 Section 5 of the AIDS Confidentiality Act. The Department may
24 conduct opt-out HIV testing as defined in Section 4 of the AIDS
25 Confidentiality Act. If the Department conducts opt-out HIV
26 testing, the Department shall place signs in English, Spanish

1 and other languages as needed in multiple, highly visible
2 locations in the area where HIV testing is conducted informing
3 inmates that they will be tested for HIV unless they refuse,
4 and refusal or acceptance of testing shall be documented in the
5 inmate's medical record. The Department shall follow
6 procedures established by the Department of Public Health to
7 conduct HIV testing and testing to confirm positive HIV test
8 results. All testing must be conducted by medical personnel,
9 but pre-test and other information may be provided by committed
10 persons who have received appropriate training. The
11 Department, in conjunction with the Department of Public
12 Health, shall develop a plan that complies with the AIDS
13 Confidentiality Act to deliver confidentially all positive or
14 negative HIV test results to inmates or former inmates. Nothing
15 in this Section shall require the Department to offer HIV
16 testing to an inmate who is known to be infected with HIV, or
17 who has been tested for HIV within the previous 180 days and
18 whose documented HIV test result is available to the Department
19 electronically. The testing provided under this subsection (d)
20 shall consist of a test approved by the Illinois Department of
21 Public Health to determine the presence of HIV infection, based
22 upon recommendations of the United States Centers for Disease
23 Control and Prevention. If the test result is positive, a
24 reliable supplemental test based upon recommendations of the
25 United States Centers for Disease Control and Prevention shall
26 be administered.

1 (Source: P.A. 97-244, eff. 8-4-11; 97-323, eff. 8-12-11;
2 97-813, eff. 7-13-12.)

3 (730 ILCS 5/3-10-2) (from Ch. 38, par. 1003-10-2)
4 Sec. 3-10-2. Examination of Persons Committed to the
5 Department of Juvenile Justice.

6 (a) A person committed to the Department of Juvenile
7 Justice shall be examined in regard to his medical,
8 psychological, social, educational and vocational condition
9 and history, including the use of alcohol and other drugs, the
10 circumstances of his offense and any other information as the
11 Department of Juvenile Justice may determine.

12 (a-5) Upon admission of a person committed to the
13 Department of Juvenile Justice, the Department of Juvenile
14 Justice must provide the person with appropriate information
15 concerning HIV and AIDS in writing, verbally, or by video or
16 other electronic means. The Department of Juvenile Justice
17 shall develop the informational materials in consultation with
18 the Department of Public Health. At the same time, the
19 Department of Juvenile Justice also must offer the person the
20 option of being tested, at no charge to the person, for
21 infection with human immunodeficiency virus (HIV). Pre-test
22 information shall be provided to the committed person and
23 informed consent obtained as required in subsection (g) ~~(d)~~ of
24 Section 3 and Section 5 of the AIDS Confidentiality Act. The
25 Department of Juvenile Justice may conduct opt-out HIV testing

1 as defined in Section 4 of the AIDS Confidentiality Act. If the
2 Department conducts opt-out HIV testing, the Department shall
3 place signs in English, Spanish and other languages as needed
4 in multiple, highly visible locations in the area where HIV
5 testing is conducted informing inmates that they will be tested
6 for HIV unless they refuse, and refusal or acceptance of
7 testing shall be documented in the inmate's medical record. The
8 Department shall follow procedures established by the
9 Department of Public Health to conduct HIV testing and testing
10 to confirm positive HIV test results. All testing must be
11 conducted by medical personnel, but pre-test and other
12 information may be provided by committed persons who have
13 received appropriate training. The Department, in conjunction
14 with the Department of Public Health, shall develop a plan that
15 complies with the AIDS Confidentiality Act to deliver
16 confidentially all positive or negative HIV test results to
17 inmates or former inmates. Nothing in this Section shall
18 require the Department to offer HIV testing to an inmate who is
19 known to be infected with HIV, or who has been tested for HIV
20 within the previous 180 days and whose documented HIV test
21 result is available to the Department electronically. The
22 testing provided under this subsection (a-5) shall consist of a
23 test approved by the Illinois Department of Public Health to
24 determine the presence of HIV infection, based upon
25 recommendations of the United States Centers for Disease
26 Control and Prevention. If the test result is positive, a

1 reliable supplemental test based upon recommendations of the
2 United States Centers for Disease Control and Prevention shall
3 be administered.

4 Also upon admission of a person committed to the Department
5 of Juvenile Justice, the Department of Juvenile Justice must
6 inform the person of the Department's obligation to provide the
7 person with medical care.

8 (b) Based on its examination, the Department of Juvenile
9 Justice may exercise the following powers in developing a
10 treatment program of any person committed to the Department of
11 Juvenile Justice:

12 (1) Require participation by him in vocational,
13 physical, educational and corrective training and
14 activities to return him to the community.

15 (2) Place him in any institution or facility of the
16 Department of Juvenile Justice.

17 (3) Order replacement or referral to the Parole and
18 Pardon Board as often as it deems desirable. The Department
19 of Juvenile Justice shall refer the person to the Parole
20 and Pardon Board as required under Section 3-3-4.

21 (4) Enter into agreements with the Secretary of Human
22 Services and the Director of Children and Family Services,
23 with courts having probation officers, and with private
24 agencies or institutions for separate care or special
25 treatment of persons subject to the control of the
26 Department of Juvenile Justice.

1 (c) The Department of Juvenile Justice shall make periodic
2 reexamination of all persons under the control of the
3 Department of Juvenile Justice to determine whether existing
4 orders in individual cases should be modified or continued.
5 This examination shall be made with respect to every person at
6 least once annually.

7 (d) A record of the treatment decision including any
8 modification thereof and the reason therefor, shall be part of
9 the committed person's master record file.

10 (e) The Department of Juvenile Justice shall by certified
11 mail, return receipt requested, notify the parent, guardian or
12 nearest relative of any person committed to the Department of
13 Juvenile Justice of his physical location and any change
14 thereof.

15 (Source: P.A. 97-244, eff. 8-4-11; 97-323, eff. 8-12-11;
16 97-813, eff. 7-13-12.)

17 Section 25. The County Jail Act is amended by changing
18 Section 17.10 as follows:

19 (730 ILCS 125/17.10)

20 Sec. 17.10. Requirements in connection with HIV/AIDS.

21 (a) In each county other than Cook, during the medical
22 admissions exam, the warden of the jail, a correctional officer
23 at the jail, or a member of the jail medical staff must provide
24 the prisoner with appropriate written information concerning

1 human immunodeficiency virus (HIV) and acquired
2 immunodeficiency syndrome (AIDS). The Department of Public
3 Health and community-based organizations certified to provide
4 HIV/AIDS testing must provide these informational materials to
5 the warden at no cost to the county. The warden, a correctional
6 officer, or a member of the jail medical staff must inform the
7 prisoner of the option of being tested for infection with HIV
8 by a certified local community-based agency or other available
9 medical provider at no charge to the prisoner.

10 (b) In Cook County, during the medical admissions exam, an
11 employee of the Cook County Health & Hospitals System must
12 provide the prisoner with appropriate information in writing,
13 verbally or by video or other electronic means concerning human
14 immunodeficiency virus (HIV) and acquired immunodeficiency
15 syndrome (AIDS) and must also provide the prisoner with option
16 of testing for infection with HIV or any other identified
17 causative agent of AIDS, as well as counseling in connection
18 with such testing. The Cook County Health & Hospitals System
19 may provide the inmate with opt-out human immunodeficiency
20 virus (HIV) testing, as defined in Section 4 of the AIDS
21 Confidentiality Act, unless the inmate refuses. If opt-out HIV
22 testing is conducted, the Cook County Health & Hospitals System
23 shall place signs in English, Spanish, and other languages as
24 needed in multiple, highly visible locations in the area where
25 HIV testing is conducted informing inmates that they will be
26 tested for HIV unless they refuse, and refusal or acceptance of

1 testing shall be documented in the inmate's medical record.
2 Pre-test information shall be provided to the inmate and
3 informed consent obtained from the inmate as required in
4 subsection (g) ~~(d)~~ of Section 3 and Section 5 of the AIDS
5 Confidentiality Act. The Cook County Health & Hospitals System
6 shall follow procedures established by the Department of Public
7 Health to conduct HIV testing and testing to confirm positive
8 HIV test results. All aspects of HIV testing shall comply with
9 the requirements of the AIDS Confidentiality Act, including
10 delivery of test results, as determined by the Cook County
11 Health & Hospitals System in consultation with the Illinois
12 Department of Public Health. Nothing in this Section shall
13 require the Cook County Health & Hospitals System to offer HIV
14 testing to inmates who are known to be infected with HIV. The
15 Department of Public Health and community-based organizations
16 certified to provide HIV/AIDS testing may provide these
17 informational materials to the Bureau at no cost to the county.
18 The testing provided under this subsection (b) shall consist of
19 a test approved by the Illinois Department of Public Health to
20 determine the presence of HIV infection, based upon
21 recommendations of the United States Centers for Disease
22 Control and Prevention. If the test result is positive, a
23 reliable supplemental test based upon recommendations of the
24 United States Centers for Disease Control and Prevention shall
25 be administered.

26 (c) In each county, the warden of the jail must make

1 appropriate written information concerning HIV/AIDS available
2 to every visitor to the jail. This information must include
3 information concerning persons or entities to contact for local
4 counseling and testing. The Department of Public Health and
5 community-based organizations certified to provide HIV/AIDS
6 testing must provide these informational materials to the
7 warden at no cost to the office of the county sheriff.

8 (d) Implementation of this Section is subject to
9 appropriation.

10 (Source: P.A. 97-244, eff. 8-4-11; 97-323, eff. 8-12-11;
11 97-813, eff. 7-13-12.)".